

our job, and our job starts with Members of the Senate meeting with Judge Garland to be able to see one-on-one, without cameras glaring, how Judge Garland responds to our individual issues. We obviously have his record, his background, his public service, what he has done as a lawyer, what he has done as a prosecutor, and what he has done as a judge on the circuit court. We also should have a confirmation hearing in the Judiciary Committee, which will give us more information.

Under the Constitution, the responsibility of the President is to make the nomination. It is now up to the Senate to do our job, and our job is to consider that nominee, for each Senator to learn as much as they possibly can—this is a critically important position, obviously, the Supreme Court of the United States—and for the institution to hold hearings and to vote. Each Senator will have to make his or her own judgment on whether we should vote for or against confirmation, but we have a responsibility to consider that nomination and a responsibility to vote.

I must say that I was very impressed by the nominee during the course of our meeting. He has impeccable qualifications as a prosecutor, judge, and now chief judge of what many call the second highest court in the land. The Senate confirmed Judge Garland on a bipartisan basis for his current judgeship, which he has held for nearly two decades. Chief Judge Garland strikes me as a thoughtful and deliberate person who has dedicated his life to public service. And I am proud to say that the nominee is a Marylander and lives in Bethesda in Montgomery County, MD.

Chief Judge Garland is the nominee for the Supreme Court and should be dealt with in this term of Congress. It is not a matter for the next President and the next Congress; it is a matter for this President and this Congress. There are 9 months left in this year, and to suggest that we don't have the time and the President doesn't have the authority to appoint a nominee is outrageous, and it is an affront to the Constitution.

This nomination is not about popularity or politics; it is about finding the next Justice who will advance the rule of law in this country, who will recognize the responsibility of the Supreme Court to be the final arbiter on constitutional issues, and having a person who can bring about greater consensus among his colleagues. As more of my colleagues meet Judge Garland, they will see that this is one of his many strengths. We need to go through the process and give Chief Judge Garland a chance.

I think it is hard to understand how you are excused from doing your job for 9 months by not having a confirmation hearing or vote. I don't think the American people understand that. Quite frankly, I don't understand that. I don't understand why we are not

going through the regular order. Regular order would be for us individually to meet with Judge Garland and for the Judiciary Committee to hold a hearing and to schedule a timely vote on the floor of the Senate. I think more and more Senators will come to that conclusion. The President did his job, and it is now time for the Senate to do its job.

The American people want to see nine Justices on the Supreme Court when it convenes its new term in October. We have a new term beginning in October of this year. We expect to see nine Justices on the Court to make decisions. You don't resolve issues on a 4-to-4 vote. We hopefully will have greater consensus. We shouldn't have a divided Court. We should be able to get more collegiality on the Supreme Court, but we also should be able to make a decision. The Supreme Court needs to be able to make a decision. With eight Justices, in too many cases they are not going to be able to make a decision.

Article II, section 2, of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court." The President has no alternative under the Constitution but to make a nomination when there is a vacancy. There is a vacancy on the Supreme Court due to Justice Scalia's untimely death. The President did his job. The Constitution says very clearly that we—the Senate—have to advise and consent. That is our requirement. That is not optional; we have that as a requirement. Never have we denied an opportunity to consider a Supreme Court nominee. It is now up to us to consider that nominee, and we should consider that nominee by doing our job—interviewing Judge Garland, scheduling a committee hearing, and voting on that nominee.

The American people twice elected President Obama to a 4-year term in office. Their voice has been heard very clearly. Elections have consequences, and President Obama has carried out the constitutional responsibilities and duties of his office by nominating Judge Garland as the successor to Justice Scalia. The President is simply doing the job the American people elected him to do. The President doesn't stop working simply because it is an election year. He has more than 9 months left in office, as do Senators who will face the voters in November. Congress should not stop working, either, in this election year.

Of course, every Senator has the right to make his or her own judgment on whether they will vote for or against confirmation. Senators were elected for 6-year terms by the citizens of their States and have the right and obligation to vote as they see fit. President Obama was elected by the people of the United States for two 4-year terms and has the right and obligation to nominate judges.

History has shown that when the roles were reversed and Democrats held the majority in the Senate, Supreme Court and judicial nominees for Republican Presidents were given hearings and up-or-down votes regardless of when the vacancies occurred. While I might have picked different judges, as a Senator, I voted to confirm the vast majority of President Bush's judicial nominations in his final year in office. I will continue to carry out my constitutional responsibilities that I undertook when I became a Senator and swore to support the Constitution.

Let me remind my colleagues that a democratically controlled Senate confirmed Justice Kennedy to the Supreme Court during the last year of President Ronald Reagan's final term in 1988. Senators also confirmed Justice Murphy in 1940, Justice Cardozo in 1932, and Justice Brandeis in 1916. The precedent of the Senate indicates that we need to take up this nominee.

What the Republicans are effectively trying to do is temporarily shrink the Supreme Court from nine to eight Justices and shorten the term of the President from 4 years to 3 years. Why? Because the President is of a different party than the Senate. This is disgraceful and indefensible.

Let me quote Justice Sandra Day O'Connor, who was appointed by President Ronald Reagan in 1981 as the first female Justice of the Supreme Court. When asked about the vacancy on the Court created by the death of Justice Scalia, Justice O'Connor said, "We need somebody there now to do the job, and let's get on with it." I agree with Justice O'Connor. Let's do our job and fulfill the Senate's constitutional responsibilities and vote up or down on Judge Garland's nomination.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. CARDIN. Mr. President, I ask unanimous consent that the Senate stand in recess as under the previous order.

There being no objection, the Senate, at 12:25 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 20 minutes as in morning business.